

HOUSE No. 4433

By Mr. Lantigua of Lawrence (by request), petition of William Lantigua (with the approval of the mayor and city council) that the city of Lawrence be authorized to regulate the rents of certain governmentally-involved housing. Housing. [Local Approval Received.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT TO ADOPT PROTECTIONS FOR LAWRENCE'S GOVERNMENTALLY-INVOLVED HOUSING STOCK.

1 *Whereas*, A serious public emergency exists with respect to the
2 housing of citizens in Lawrence residing in governmentally-
3 involved housing, inasmuch as there is a threat that many low-
4 income individuals and families residing in such housing,
5 particularly those elderly and disabled, may be threatened with
6 displacement as a result of prepayment of mortgage financing,
7 loss of use restrictions, expiring subsidy contracts, and expected
8 increases in rent, and there is a threat that affordable housing
9 stock will be lost due to expiration of use restrictions and subsidy
10 contracts and such pre-payment, further exacerbating an extreme
11 housing shortage within the City for low-income families and
12 voters, and whereas, in approving Chapter 40P of the General
13 Laws, the voters did not exempt such housing from protection or
14 regulation and whereas it is the City's policy to encourage owners
15 of this governmentally-involved housing to accept incentives to
16 keep such housing affordable and avert displacement, that such
17 emergency should be met by the City of Lawrence immediately;
18 therefore, this act is declared to be in the public interest.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 2. (A) Notwithstanding the provisions of any general
2 or special law to the contrary, including, without limitation, the
3 provisions of Chapter 40P of the General Laws and Chapter 282
4 of the Acts of nineteen hundred and ninety-four, for so long as the
5 City Council of Lawrence shall determine that the circumstances

6 described in section one hereof continue to exist, the City of
7 Lawrence shall by ordinance regulate the rent for use or occu-
8 pancy of governmentally-involved or formerly governmentally-
9 involved housing to the extent such regulation is not preempted by
10 federal law or by Section Six of Chapter 708 of the Acts of nine-
11 teen hundred and sixty-six as amended, once the basis for federal
12 or state rent regulation or preemption no longer exists. For pur-
13 poses of this act, “governmentally-involved housing” is defined as
14 housing units which the United States, the Commonwealth or any
15 authority created under the laws thereof (i) insures the mortgage
16 thereon, or owns, operates, finances, or subsidizes such housing
17 units, and (ii) regulates the individual rents thereof, including
18 without limitation housing units constructed or rehabilitated pur-
19 suant to Section 202 of the Housing Act of 1959, as amended (12
20 U.S.C. § 1701q), Sections 220, 221(d) and 236 of the National
21 Housing Act, as amended (12 U.S.C. §§ 17151(d) or 1715z-1),
22 Section 811 of the Cranston-Gonzalez National Affordable
23 Housing Act, as amended (42 U.S.C. § 8013), or housing units
24 financed or subsidized pursuant to project-based programs for
25 low-income persons under Section 8 of the United States Housing
26 Act of 1937, as amended (42 U.S.C. § 1437f) or the project-based
27 Massachusetts Rental Voucher Program, so called (see line item
28 7004-9004 of Section 2 of Chapter 159 of the Acts of two thou-
29 sand, as well as 760 C.M.R. Part 49.00), but not including the
30 following:—

31 (1) housing units owned or acquired by the City of Lawrence
32 through tax foreclosure;

33 (2) housing units in a building or structure of fewer than ten
34 units which are not part of a larger housing development, whether
35 on one or more sites;

36 (3) structures containing housing units subsidized with mobile
37 tenant-based rental assistance that would not otherwise come
38 within the definition of governmentally involved housing;

39 (4) public housing owned or operated by the Lawrence Housing
40 Authority under Chapter 121Bf of the General Laws, the United
41 States Housing act of 1937 (42 U.S.C. §§ 1437a et seq.), or any
42 successor act or public housing programs formerly assisted under
43 the United States Housing Act of 1937;

44 (5) housing units where the sole government involvement is the
45 owner's participation in federal, state, or municipal funded pro-
46 grams for home repairs, energy conservation, or lead paint abate-
47 ment.

48 (6) housing units which become governmentally involved after
49 January 1, 2005;

50 For the purpose of this act, "formerly governmentally-involved
51 housing" is defined as housing which was governmentally-
52 involved housing as of April 1, 2000, but which then no longer is
53 owned, operated, financed, subsidized, mortgage-insured, or rent-
54 regulated by the United States, the Commonwealth, or any
55 authority created under the laws thereof, provided that "formerly
56 governmentally involved housing" shall including any housing
57 receiving subsidy under Section 8(t) of the United States Housing
58 Act of 1937 (42 U.S.C. § 1437f(t)).

59 For the purpose of this act, "low-income" is defined as annual
60 household income which is eighty percent or less of the median
61 income for the area as determined by the United States Depart-
62 ment of Housing and Urban Development, with adjustments for
63 smaller and larger families.

64 The City of Lawrence shall by ordinance create an official body
65 to establish as the maximum rent for the governmentally-involved
66 and formerly governmentally-involved housing units the rent in
67 effect therefor on April 1, 2000 or six months before the basis for
68 federal or state rent regulation or preemption lapsed, whichever is
69 later, adjusted to insure such rent provides a fair net operating
70 income as of the date of the official body to make individual
71 adjustments in such maximum rents as may be necessary to
72 remove hardships or to correct other inequities, the official body
73 shall observe the principle of maintaining maximum rents for such
74 housing units at levels which will yield to owners a fair net oper-
75 ating income from such housing units. In determining whether the
76 maximum rent for such housing units yields a fair net operating
77 income, due consideration shall be given to, among other relevant
78 factors:—

79 (1) increases in property taxes;

80 (2) unavoidable increases in operating and maintenance
81 expenses;

82 (3) major capital improvement of the housing units, distin-
83 guished from ordinary repair, replacement, and maintenance;

84 (4) increases or decreases in living space, services, furniture,
85 furnishings or equipment; and

86 (5) substantial deterioration of the housing units, other than
87 ordinary wear and tear, or failure to perform ordinary repair,
88 replacement, or maintenance.

89 (B) Such ordinance shall provide that no person shall bring an
90 action to recover possession of a governmentally-involved
91 housing unit, or of a formerly governmentally-involved housing
92 unit, to the extent that such regulation is not otherwise preempted
93 by federal law or section six of Chapter 708 of the acts of nineteen
94 hundred and sixty-six as amended, unless:—

95 (1) the tenant has failed to pay the rent to which the owner is
96 entitled;

97 (2) the tenant has violated an obligation or covenant of tenancy
98 not inconsistent with Chapter 93A of the General Laws or this act
99 other than the obligation to surrender possession upon proper
100 notice, and has failed to cure the violation after having received
101 written notice thereof;

102 (3) the tenant is causing, committing, or permitting a nuisance
103 in, or substantial damage to, the housing unit, or is creating sub-
104 stantial interference with the comfort, safety, or enjoyment of the
105 owner or other occupants of the same or any adjacent unit;

106 (4) the tenant has used or permitted use of a housing unit for
107 illegal purposes;

108 (5) the tenant, who has a written lease or rental agreement
109 which has terminated, has refused, after written requests or
110 demand by the owner, to execute a written extension or renewal
111 thereof for a further term of like duration on terms not inconsis-
112 tent with or violative of any provision of this act;

113 (6) the tenant has refused the owner reasonable access to the
114 housing unit for the purpose of making necessary repairs or
115 improvements required by law, or for the purpose of inspection as
116 permitted or required by the lease or law, or for the purpose of
117 showing the housing unit to any prospective purchaser or mort-
118 gagee;

119 (7) the tenant holding at the end of a lease term is a subtenant
120 not approved by the owner; or

121 (8) the owner seeks to recover possession for any other just
122 cause not in conflict with the provisions and purposes of this act
123 or Chapter 93A of the General Laws.

124 The provisions of this Section shall be construed as additional
125 restrictions on the right to recover possession of such housing
126 units.

127 (C) Such ordinance shall also provide that no person shall
128 remove any governmentally-involved or formerly governmentally-
129 involved housing accommodation from the low-income rental
130 housing use (including but not limited to sale, lease, or other dis-
131 position of the property which may have such an effect), or con-
132 vert such property to a condominium or cooperative, without first
133 obtaining a permit for that purpose from the official body, to the
134 extent that such provision is not preempted by federal law or
135 section six of Chapter 708 of the acts of nineteen hundred and
136 sixty-six as amended. Such permit may be subject to terms and
137 conditions not inconsistent with the purposes and provisions of
138 this act, including, without limitation, (a) incentives to continue in
139 effect the low-income restrictions previously in place for the prop-
140 erty and (b) where sale, lease, or disposition of the property may
141 result in the loss of all or a portion of the property for low-income
142 rental housing use, the right of an incorporated tenants association
143 in such housing, the City of Lawrence, the Lawrence Housing
144 Authority, or non-profit community development corporations to
145 negotiate for, acquire and operate such property on substantially
146 equivalent terms and conditions as offered or available to a bona
147 fide third-party purchaser.

148 (D) To the extent not preempted by federal law or Section six
149 of Chapter 708 of the acts of nineteen hundred and sixty-six as
150 amended, such ordinance shall require that owners of governmen-
151 tally-involved housing, or formerly governmentally-involved
152 housing, affirmatively seek out and accept any prospective gov-
153 ernmental housing resources, whether tenant-based or project-
154 based, which maximize affordability of the housing units
155 consistent with the income character of the property and the own-
156 er's right to obtain a fair net operating income for the housing
157 units, provided that the City shall assist owners by identifying
158 such governmental housing resources.

159 (E) To the extent not preempted by federal law or section six of
160 Chapter 708 of the acts of nineteen hundred and sixty-six as
161 amended, and so long as such regulation is consistent with the
162 owner's right to obtain a fair net operating income, such ordinance
163 shall also provide that the City may establish local preferences,
164 priorities, and income limits for admission to governmentally-
165 involved housing or formerly governmentally-involved housing
166 upon unit turnover, consistent, to the extent practicable, with the
167 income profile of the property twelve months prior to the date of
168 the loss of rent preemption or the decision to not renew an
169 expiring subsidy contract. The official body may approve an alter-
170 nate plan requested by the owner to create a tenancy involving any
171 person with a history of conduct which would, if repeated, be
172 grounds for eviction from such housing.

173 (F) Such ordinance shall also provide that the official body may
174 grant exemptions and exceptions to the general provisions of this
175 act when such action would tend to maintain or increase the
176 supply of affordable housing in Lawrence, including, without lim-
177 itation, promoting the sale of properties to bona fide tenant orga-
178 nizations or non-profit community development corporations
179 under terms and conditions which would tend to maintain the
180 income character of the property.

181 (G) Such ordinance shall provide that the official body may
182 promulgate such rules, regulations and orders as it may deem nec-
183 essary to effectuate the purposes of this act and the ordinance. The
184 board may hold hearings on any matters within its authority under
185 this act and ordinance. Any hearing regarding matters related to
186 regulation of rents or removal permits for governmentally-
187 involved or formerly governmentally involved housing or
188 regarding compliance with other provisions of this act, or the ordi-
189 nance, orders, rules, or regulations adopted or promulgated here-
190 under, shall be conducted by the official body in accordance with
191 the provisions of section eleven of Chapter 30A of the General
192 Laws except that requirements (7) and (8) of such section eleven
193 shall no apply to such hearings.

194 (H) All decisions of the official body may be appealed to the
195 Housing Court Department of the Trial Court, Northeast Division,
196 by any person aggrieved thereby, whether or not previously a
197 party in the matter, within thirty calendar days after notice of such

198 decision. Judicial review of adjudicatory decisions shall be con-
199 ducted in accordance with Section fourteen of Chapter 30A of the
200 General Laws. Judicial review of regulations shall be conducted in
201 accordance with section seven of Chapter 30A of the General
202 Laws. The Housing Court Department of the Trial Court, North-
203 east Division, shall have jurisdiction to enforce the provisions
204 hereof and any ordinance, rule or regulation adopted hereunder,
205 and on application of the board or any aggrieved person may
206 restrain or enjoin violations of any such ordinance, rule, or regula-
207 tion. In the interests of justice, the Court may allow any necessary
208 parties to be joined in or to intervene in any action brought here-
209 under and may in its discretion allow or require an action to pro-
210 ceed as a class action.

1 SECTION 3. It shall be unlawful for any person to do or omit
2 to do any action in violation of this act, or any order, ordinance,
3 rule or regulation adopted or promulgated hereunder. Whoever
4 willfully violates any provision of this act or any order, ordinance,
5 rule or regulation adopted or promulgated hereunder or whoever
6 makes a false statement in any testimony before the board or its
7 agents, or whoever knowingly supplies the official body with false
8 information shall be punished by a fine of not more than four hun-
9 dred dollars or by imprisonment for not more than ninety days, or
10 both; provided, however, that in the case of a second or subse-
11 quent offense, or where the violation continues after notice
12 thereof, such person shall be punished by a fine of not more than
13 two thousand dollars, or by imprisonment for not more than one
14 year, or both.

1 SECTION 4. The provisions of this act are severable, and if any
2 of its provisions shall be held unconstitutional or otherwise
3 invalid by any court of competent jurisdiction, the decision of
4 such court shall not affect or impair any of the remaining provi-
5 sions.

1 SECTION 5. The provisions of M.G.L. c. 40P shall not apply to
2 any ordinance adopted under this enabling authority.

1 SECTION 6. This act shall take effect upon passage.